

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

GILBERTO LARA-RUIZ,)	
)	
Movant,)	
)	
v.)	Case No. 4:16-cv-0087-DGK
)	(Crim. No. 4:09-00121-DGK)
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER DENYING MOTIONS FOR TRANSCRIPT OF EVIDENTIARY HEARING

This habeas case arises out of Movant Gilberto Lara-Ruiz's conviction for using a firearm during and in relation to a drug trafficking crime. Following an evidentiary hearing, the Court denied Movant's petition and declined to issue a certificate of appealability. Now before the Court are Movant's two motions for a free transcript of the evidentiary hearing (Docs. 25, 28).

A prisoner has no absolute right to a transcript to assist him in preparing a collateral attack on his conviction; a transcript need be provided only if a court finds a transcript is *required* to decide a *non-frivolous* case. *United States v. Losing*, 601 F.2d 351, 353 (8th Cir. 1979) (emphasis added). After the evidentiary hearing in this case, the Court cannot characterize Movant's claim as non-frivolous.

Movant's sole claim is that trial counsel failed to properly advise him of the potential risks of going to trial, therefore counsel was constitutionally ineffective. *Lara-Ruiz v. United States*, No. 4:16-cv-0087, 2016 WL 4445768, at *1 (W.D. Mo. Aug. 22, 2016). After carefully listening to the evidence at the evidentiary hearing, the Court found this claim was meritless. *Id.* at *2. The Court noted that the record contained a letter from trial counsel to Movant which

warned him that “if you lost at trial, you would be at risk of getting a minimum sentence of 10 years.” *Id.* The Court also noted that when confronted at the hearing with the letter, Movant’s answers became evasive and non-responsive, and his demeanor indicated he was not being truthful. *Id.* At the same time, the Court found trial counsel’s testimony that she told Movant numerous times that if he lost at trial he would likely receive a far longer sentence entirely credible. *Id.*

Given the record, the Court finds any further proceeding in this case, including a request for a certificate of appealability, is frivolous. Accordingly, Movant’s motions for a free transcript of the evidentiary hearing (Docs. 25, 28) are DENIED.

IT IS SO ORDERED.

Date: November 17, 2016

/s/ Greg Kays
GREG KAYS, CHIEF JUDGE
UNITED STATES DISTRICT COURT